

REMARKS

The Examiner has objected to Claims 5, and 7-11 as being dependent upon a rejected base claim, but has further stated that such claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Examiner is thanked for the allowance of Claims 5, and 7-11.

The Examiner has rejected Claims 1, 2, 4, 6, and 12-15 under 35 U.S.C. 103(a) as being unpatentable over Bellare et al (hereinafter, "Bellare"). Applicant respectfully disagrees with this rejection, since such claims have been cancelled hereinabove or amended to depend on a claim deemed allowable either by the Examiner or by virtue of the attached affidavit (see below).

In the Examiner's previous action, the Examiner has rejected Claim 3 under 35 U.S.C. 103(a) as being unpatentable over Balenson et al. in view of Black et al. In response, applicant removed the Balenson reference using an affidavit.

In response, the Examiner now rejects Claim 3 under 35 U.S.C. 103(a) as being unpatentable over a new combination. Specifically, the Examiner now rejects Claim 3 under 35 U.S.C. 103(a) as being unpatentable over Bellare in view of Black et al.

Claim 3, however, is deemed allowable, since the attached affidavit and Exhibit A evidence the fact that the invention in this application was conceived of and/or reduced to practice at least as early as December 07, 1998, prior to July 15, 1999 (the effective date of the Black reference).

Such evidence has been submitted with a first reply after a final rejection for the purpose of overcoming a new ground of rejection or requirement (i.e. a new 35 U.S.C. 103(a) combination) made in the most recent final rejection in which case the declaration is considered timely and should be considered. See MPEP 715.09 (C).

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Thus, all of the independent claims are deemed allowable. Moreover, the dependent claims (including those added in the present response) are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAIIP080).

Respectfully submitted,


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